

N O. 2 1 8 0 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADAI LESER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

FILED

AUG 23 1967

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THE UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

April 1900

UNITED STATES OF AMERICA

vs.

JOHN W. HAY

Defendant

JOHN W. HAY

Defendant

JOHN W. HAY

Defendant

JOHN W. HAY

Defendant

JOHN W. HAY

Defendant

JOHN W. HAY

Defendant

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UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

I

JURISDICTION AND
STATEMENT OF THE CASE

On June 20, 1962, the Federal Grand Jury for the Southern District of California, returned indictment No. 30956, charging appellant and a co-defendant with 35 counts of mail fraud in violation of Title 18, United States Code, Section 1341. Thereafter, on October 31, 1963, a jury returned verdicts of guilty on 31 counts and on November 18, 1963, appellant was sentenced to a total period of imprisonment of 17-1/2 years and was fined sums totalling \$50,000. Notice of Appeal was filed the same day.

Appellant's conviction was affirmed by this Court in Case

NO. 1000

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADAM L. BROWN

UNITED STATES OF AMERICA

APPELLANT'S BRIEF

STATEMENT OF THE CASE

The case involves the interpretation of the provisions of the
District of Columbia Code, Chapter 22, Section 2201, which
relates to the appointment of a receiver for the District of
Columbia. The case arises from a dispute between the
District of Columbia and the United States of America.
The District of Columbia seeks to have the appointment of
a receiver for the District of Columbia affirmed, while the
United States of America seeks to have the appointment
of a receiver for the District of Columbia reversed.
The District of Columbia argues that the provisions of the
District of Columbia Code, Chapter 22, Section 2201, require
the appointment of a receiver for the District of Columbia
in the event of a default by the United States of America.
The United States of America argues that the provisions of the
District of Columbia Code, Chapter 22, Section 2201, do not
require the appointment of a receiver for the District of
Columbia in the event of a default by the United States of
America.

No. 19093 on March 19, 1966. Appellant's Petition for Rehearing was denied on April 20, 1966 [See Leser v. United States, 358 F.2d 313 (9th Cir. 1966)]. The United States Supreme Court dismissed appellant's petition for certiorari on September 28, 1966. [See Leser v. United States, 358 U.S. 802 (1966).]

On December 9, 1966, appellant filed a Motion to Vacate Sentence under Title 28, United States Code, Section 2255, which was designated as Case No. 66-1980-PH. On January 11, 1967, appellant's Motion was denied by United States District Judge Pierson M. Hall. On April 18, 1967, appellant filed his Notice of Appeal which contained the statement that he had received no notice of the denial of his motion until February 3, 1967.

Appellee contends that this Court lacks jurisdiction in this matter by virtue of appellant's failure to file a timely Notice of Appeal as required by Rule 73(a), Federal Rules of Criminal Procedure.

II

STATUTES INVOLVED

Title 28, United States Code, Section 2255, provides in pertinent part:

"A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution

or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the Court which imposed sentence to vacate, set aside or correct the sentence."

III

STATEMENT OF FACTS

Appellee adopts as its statement of facts those set forth by this Court in its opinion affirming appellant's conviction in Leser v. United States, 358 F.2d 313 (9th Cir. 1966).

IV

ARGUMENT

A. THIS COURT IS WITHOUT JURISDICTION.

The record shows that appellant filed his Notice of Appeal 74 days after the District Court denied his Motion to Vacate Sentence. This is beyond the 60 days prescribed by Rule 73(a) of the Federal Rules of Civil Procedure for the filing of a Notice of Appeal.

B. THE DISTRICT COURT PROPERLY
DENIED APPELLANT'S MOTION.

The sole ground of appellant's motion was that an alternate juror had unlawfully been substituted for a regular member of the jury. In denying appellant's motion, the District Court found that: "The United States Court of Appeals specifically passed upon all of the claims set forth in their instant petition and found them to be without merit." In fact, this Court in Leser v. United States, 358 F.2d 313 (9th Cir. 1966); did consider and discuss at length this particular claim of appellant's and found it to be without merit. Obviously, the question of substitution of a juror has already been decided. Section 2255 does not provide a method for relitigating matters which have already been decided on direct appeal. United States v. Marchese, 341 F.2d 782 (9th Cir. 1965); Matysek v. United States, 339 F.2d 389 (9th Cir. 1964), cert. denied 381 U.S. 917 (1964); Perno v. United States, 245 F.2d 60 (9th Cir. 1957); Evans v. United States, 346 F.2d 512 (8th Cir. 1965); Sykes v. United States, 341 F.2d 104 (8th Cir. 1965); Butler v. United States, 340 F.2d 104 (8th Cir. 1965); Ingram v. United States, 299 F.2d 351 (5th Cir. 1962); Smith v. United States, 265 F.2d 14 (5th Cir. 1959); Gallarelli v. United States, 260 F.2d 259 (1st Cir. 1958), cert. denied 359 U.S. 938 (1958).



CONCLUSION

For the reasons stated above, the court should dismiss appellant's appeal for want of jurisdiction, or in the alternative, should affirm the District Court's denial of appellant's Motion to Vacate Sentence.

Respectfully submitted,

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